CARRIERS — PERSONAL INJURIES TO PASSENGERS — JUSTIFICATION FOR ASSAULTS AND INSULTS BY SERVANTS. — A passenger on a street car by abusive language provoked an assault from the defendant's motorman. *Held*, that the passenger cannot recover. *Binder* v. *Georgia Ry. & Electric Co.*, 79 S. E. 216.

The peculiar Georgia rule that insult is justification for assault brings into issue the question whether a justification to one of its servants as an individual will excuse a breach of public duty on the part of the company. For discussion see NOTES, p. 171.

CONFLICT OF LAWS — JURISDICTION FOR DIVORCE — EXTRATERRITORIAL VALIDITY OF DIVORCE GRANTED WITHOUT PERSONAL SERVICE. — A deserted wife stayed in South Dakota long enough to establish a separate domicile by the law of that state and obtained there a decree of divorce without personal service on the husband. The defendant, having subsequently married her, was sued by her former husband for criminal conversation. *Held*, the plaintiff had a cause of action. *Berney* v. *Adriance*, 142 N. Y. Supp. 748.

A decree of divorce operates *in rem* on the status of the petitioner. *Atherton* v. *Atherton*, 181 U. S. 155, 21 Sup. Ct. 544; *Ditson* v. *Ditson*, 4 R. I. 87. For this reason the great weight of authority is that personal jurisdiction over the defendant in a divorce action is not necessary. All that is necessary is sufficient notice of the suit. *Felt* v. *Felt*, 59 N. J. Eq. 606, 45 Atl. 105; *Ditson* v. *Ditson*, *supra*. New York, however, now with the backing of the United States Supreme Court, holds that it is not required by the "full faith and credit" clause of the Constitution to recognize as valid a decree of divorce rendered in another state than the domicile of matrimony, unless based on personal service. *Winston* v. *Winston*, 165 N. Y. 553, 59 N. E. 273; *Haddock* v. *Haddock*, 201 U. S. 562, 26 Sup. Ct. 525. The South Dakota decree in the principal case being invalid from the point of view of New York, it therefore follows that the husband had existing marital rights infringed by the defendant. For a criticism of this theory see 19 HARV. L. REV. 586.

CONFLICT OF LAWS — RECOGNITION OF FOREIGN JUDGMENTS — JUDGMENT AGAINST CO-RESPONDENT BASED ON CONSTRUCTIVE SERVICE. — The plaintiff brought divorce proceedings in India, the *situs* of the marriage, and under a statute joined the defendant as co-respondent. The defendant, an English subject, and domiciled in England, had left India before the suit was brought, the writ being served on him in England by registered post, according to the requirements of the Indian statute. The divorce was granted, and at the same time judgment for a large sum of money was entered against the defendant. The plaintiff brought suit on this judgment in England. *Held*, that he may recover. *Phillips* v. *Batho*, [1913] 3 K. B. 25.

At common law the courts of one jurisdiction will enforce judgments obtained in foreign jurisdictions when the judgment has imposed a valid obligation on the defendant. Except where there has been express or implied consent to the foreign jurisdiction, a judgment does not usually create a valid personal obligation in the absence of personal service within the jurisdiction even though the foreign laws as to constructive service are complied with. *Sirdar Gurdyal Singh* v. *Rajah of Faridkote*, [1894] A. C. 670; *McEwan* v. *Zimmer*, 38 Mich. 765. The obligation, however, is valid in such a case if the defendant was a subject of the foreign sovereign, *Douglas* v. *Forrest*, 4 Bing. 686; or probably if he was domiciled there. *Henderson* v. *Staniford*, 105 Mass. 504; *Hunt* v. *Hunt*, 72 N. Y. 217. Judgment in actions *in rem* may be binding as to the disposition of the *res* without personal service on the defendant when rendered by a court of a sovereign within whose territory the *res* lies. *The Belgenland*, 114 U. S. 355. Judgments for divorce rendered at the *situs* of the marriage

are usually held valid without personal service. *Loker* v. *Gerald*, 157 Mass. 42, 31 N. E. 709. *Doerr* v. *Forsythe*, 50 Ohio St. 726, 35 N. E. 1055. However, actions arising out of an interference with a *res*, resting on a personal duty to make reparation, are clearly actions *in personam*. Accordingly suits for trespass to realty are personal actions. Likewise suits for alimony, even when ancillary to divorce proceedings, are treated as purely personal actions. *Rigney* v. *Rigney*, 127 N. Y. 408, 28 N. E. 405. In the principal case it would seem that a suit in India against a co-respondent was of the same nature, and that the Indian court could not impose a binding obligation upon the defendant. It seems hard to support the decision on the ground that the defendant as an English subject was, because of his allegiance, under an obligation to obey the Indian laws as to service. Ordinarily the different parts of the British empire are looked upon as distinct foreign jurisdictions. *Emmanuel* v. *Symon*, [1908] 1 K. B. 302. And there seems no reason to say that the English sovereign has commanded his subjects to obey the laws of a separate part of the empire even if the English court does not afford relief against co-respondents except those who offend against English marriages.

CONTEMPT — ACTS AND CONDUCT CONSTITUTING CONTEMPT — AVOIDING SUBPŒNA. — A witness, expecting to be subpœnaed, but before issue, concealed himself. *Held*, that he is guilty of contempt. *Aaron* v. *State*, 62 So. 419 (Miss.).

A defendant attempted to persuade one wanted as a witness to avoid service of the subpœna. *Held*, that he is guilty of a misdemeanor. *Rex* v. *Carroll*, [1913] Vict. L. R. 380.

For a discussion of the important bearing on every-day practice of the principles involved in these cases, see NOTES, p. 165.

CONTRACTS — DEFENSES — IMPOSSIBILITY — DESTRUCTION OF CONTEMPLATED MEANS OF PERFORMANCE. — The defendant contracted to sell onions to the plaintiff, "shipment per P. & O. steamer sailing from Japan about the 8th of September and coming direct to Sydney." No such steamer sailed due to the fault of neither party. The plaintiff, refusing to accept delivery by any other route, sued for failure to deliver according to the terms of the contract. *Held*, that the plaintiff may not recover. *Cornish & Co.* v. *Kanematsu*, 13 New South Wales, 83.

Ordinarily a party will not be excused from performance of a contract merely because it has become impossible. *Paradine* v. *Jane*, Aleyn 26; *Rowe* v. *Peabody*, 207 Mass. 226, 93 N. E. 604. But it is well settled that where performance of the contract depends upon the continued existence of the subject matter, in the absence of any warranty by either party that it shall continue to exist, the destruction of the subject matter without the fault of either party will excuse further performance. *Taylor* v. *Caldwell*, 3 B. & S. 826; *Martin Emerich, etc. Co.* v. *Siegel, Cooper & Co.*, 237 Ill. 610, 86 N. E. 1104. The principle of this rule has been extended to cases in which the impossibility arises from the failure of the contemplated means of performance. *Nickoll & Knight* v. *Ashton, Eldredge & Co.*, [1901] 2 K. B. 126; *Clarksville Land Co.* v. *Harriman*, 68 N. H. 374, 44 Atl. 527. In the principal case the court bases its decision upon the ground of impossibility of performance. But the case is closely analogous to cases of goods sold "to arrive," in which the words "to arrive" are construed as a condition precedent to the liability of either party under the contract, although the words in the principal case do not so clearly constitute a condition precedent as they do in the "to arrive" cases. *Johnson* v. *MacDonald*, 9 M. & W. 600; *Rogers* v. *Woodruff*, 23 Oh. St. 632. The two doctrines rest upon a similar principle, that neither party should be held liable for the failure of that which was, in the contemplation of the parties, the basis of the contract, and the continued existence of which he did not warrant. See 19 HARV. L. REV. 462.